Recommendations on Developing Performance Based Budget Proposals for Courts

Rule of Law Institutional Strengthening Program (ROLISP)

USAID Contract No. AID-117-C-12-00002

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Foreword

In October 2012, ROLISP released an assessment report on Moldovan courts of law. This report revealed a downside of the existing court financing system, namely the unfair distribution of funds between courts. The report offers an example of two courts with the same number of judges and very much the same structure of cases examined in 2011, while the average financing per case for one court was considerably higher than for the other. This situation is explained by the fact that courts were not financed on the basis of their effort—an indicator showing the court's performance—but on the previous year's financing level. Over the years, the case management in some courts has changed, while their financing remained at the level of the previous years.

In August, USAID ROLISP supported the development of a study on the courts financing practice in recent years in light of the international courts financing practices. The study offers an analysis of the courts financing practice and recommendations on changing the budgeting for courts so as to take into account their performance.

In conclusion, both the recommendations of the aforementioned reports and the situation existing in the courts financing system impose the need of switching from the historical financing to performance-based financing for courts.

The performance-based budgeting can be performed using several models, such as zero-based budgeting (ZBB), program-based budgeting (PB), and performance-based budgeting (PBB).

ZBB implies the annual assessment of the purpose of each program and its priorities and considering all spending possibilities. In case of ZBB, one starts by assuming that the entity had no budget in the previous year and, depending on the expected benefits and involved costs, one develops budget proposals for the current year through an independent assessment. Thus, ZBB refers to developing a budget without a reference to previous and accomplished plans but with a justification of the proposed resource allocation.

PB implies organizing activities by programs (activities or services with a common goal), identifying alternatives for achieving the purpose of the program, establishing costs and benefits of each alternative and choosing the most advantageous alternative. Currently, the Ministry of Finance is implementing PB.

PBB implies using performance indicators for allocating budgets. Measuring the workload, such as the number of citizens served or the number of summons issued, helps to justify the budget. Measuring costs and resources, such as the cost per citizen served or the cost per summons issued, helps to assess the efficiency and cost effectiveness of providing a certain service. This model implies the existence of a well-developed system of sector statistics that would enable retrieving data quickly and easily for various indicators used to measure the performance of an entity.

Recommendations on Court Budgeting

Courts' spending has a diverse structure but can be grouped in three large categories: staff expenditures, operating expenditures, and capital expenditures.

According to the economic budget spending classification,[1] staff expenditures are formed of the following spending items:

- 111 – Work remuneration
- 112 – Mandatory social insurance
- 116 – Mandatory medical insurance paid by the employer

Operating expenditures are formed of:

- 113 – Payment for goods and services
- 114 – Work trips
- 135 – Transfers to population

Capital expenditures:

- 241 – Capital investment
- 242 – Purchase of fixed assets
- 243 – Capital repairs

1. Budgeting for Capital and Staff Expenditures

In 2012, staff expenditures accounted approximately for 62% of the courts' budget.[2] Planning these expenditures is very well regulated and does not require additional recommendations. One clarification is necessary though: staff expenditures should be planned by through the ZBB model. That is, every fiscal year, the requested funds should be justified from zero, as if there was no previous year's budget.

A similar approach is applied for capital expenditures, with the remark that, unlike staff expenditures, there is no legal framework regulating the planning of capital expenditures. Capital expenditures should be planned strictly in accordance with the actions reflected in policy documents.

2. Budgeting for Operating Expenditures

According to the same report,[3] in 2012 operating expenditures accounted for 24% of the total courts' budget. It is this category that requires special attention.

This study proposes several models for planning operating expenditures but all of them are based on the ***performance-based budgeting.*** As previously mentioned, this model implies the existence of some performance indicators. Given the multitude of performance indicators that one can use for budget planning, it is important to identify those that would reflect precisely the budget necessary to each court. It is proposed to use ***the number of cases examined*** as the court's performance indicator for each recommendation presented further. All calculations presented further are centered on this indicator so the budget allocated to courts will depend primarily on this indicator.

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[1] Order No. 91 of October 20, 2008, of the Ministry of Finance "On the Budget Classification"
[2] Report
[3] See reference 2.

The courts financing system in Moldova is based on the financial autonomy. Courts can establish the necessary funds under items 113, 114, and 135 themselves. However, the DJA limits the actual allocations depending on the limits imposed by the Ministry of Finance. Thus, courts allocate funds under the aforementioned items in accordance with their needs but within the limits established by the DJA. The problem of unfair funds distribution occurs when allocations are distributed between courts. To address it, there is need for a mechanism that would establish single funds distribution criteria depending on the number of cases examined. In what follows we propose a few budgeting models for courts, which will ensure:

1. Fair distribution of funds between courts
2. Transparency of the funds distribution
3. Predictability of funds planning at the courts' level

2.1 Recommendation 1. Planning operating expenditures on the basis of the number of cases examined

Operating expenditures consist of several spending items, which, more or less, influence the budget level. The proposed model is actually a formula that factors in the number of cases examined and the value of each type of case examined. It is important to mention that cases will be grouped in three types—civil, contraventional, and criminal—which is determined by the current classification in the Integrated Case Management System (ICMS).

The formula looks as follows:

$$B = K + (C_{DC} \times N_{DC} + C_{DCo} \times N_{DCo} + C_{DP} \times N_{DP})$$

where:

B	budget
K	Fixed amount attributed to all courts irrespective of the number of cases examined
C_{DC}	Cost of a civil case
N_{DC}	Number of civil cases examined
C_{DCo}	Cost of a contraventional case
N_{DCo}	Number of contraventional cases examined
C_{DP}	Cost of a criminal case
N_{DP}	Number of criminal cases examined

To determine the fixed sum and the cost of a case, we will use regression analysis and the following data:

1. Number of cases examined over the past three years, by types, for each individual court
2. The operating budget spent over the past three years by each individual court

Our regression analysis will cover the period of 2010 through 2012. After the regression analysis, we will identify an indicator R^2 that reflects the level of correlation between the dependent variable (budget) and the independent variable (number of cases examined). The closer this indicator is to one, the stronger the influence of the independent variables on the dependent variable.

In what follows we present four formula options and the result of the regression analysis.

A. Option 1

The regression analysis was performed on the following spending lines:

Table 1. Spending lines subject to the regression analysis for Option 1

Line	Title
113.03	Office supplies and utility items
113.06	Books and periodicals
113.10	Pharmaceutical drugs and consumables
113.11	Telecommunications and mail
113.13	Transport
113.14	Upholstered furniture and equipment
113.17	Current repairs of buildings and rooms
113.18	Current repairs of equipment and inventory
113.20	National and local symbols, state decorations
113.21	Professional training
113.22	Publishing services
113.23	Protocol expenditures
113.30	Computing and IT activities
113.45	Goods and services that do not fall into other categories
114.01	Travels within the country
135.00	Transfers to population

The result of this regression analysis is:

R2	0.69
Adjusted R2	0.68

Intercept	159,536.61
Civile	87.67
Penale	274.12
Contraventionale	-40.36

The proposed formula is:

> **Budget =**
> **159,536.61+87.67*Civil+274.12*Criminal+40.36*Contraventional**

Thus, each court will receive a budget of MDL 159,536.61, irrespective of the number of cases examined, just "to keep the doors open," which then will be increased depending on the number of cases examined.

B. Option 2

This option differs from the previous one in that we did not factor in Line 135—Transfers to population. The rationale behind this move is that these expenditures should not influence court's performance.

The result of this regression analysis is:

R2	0.71
Adjusted R2	0.70

Intercept	150,925.84
Civile	86.46
Penale	282.38
Contraventionale	-41.69

The proposed formula is:

$$Buget = 150\,925.84 + 86.464 * Civile + 282.38 * Penale - 41.69 * Contraventionale$$

The regression analysis showed that the elimination of this type of spending has influenced the result positively so that the indicator R^2 increased from 0.69 to 0.71. As previously mentioned, this indicator shows the level of correlation between the dependent variable and the independent variable. In case of Option 2, 71% of the court's budget is explained by the number of cases examined. The remaining 29% are other factors that either were not or cannot be subject to the analysis.

C. Option 3

In this option, we eliminated Line 113.13—Transport. The rationale behind this move is the same as in Option 2.

The result of this regression analysis is:

R2	0.72
Adjusted R2	0.71

Intercept	113,936.70
Civile	88.09
Penale	295.13
Contraventionale	-41.56

The proposed formula is:

$$Buget = 113\,936.70 + 88.09 * Civile + 295.13 * Penale - 41.56 * Contraventionale$$
$$Budget =$$

D. Option 4

This time, we excluded Line 113.17—Current repairs of buildings and rooms from the regression analysis. This is justified by the fact that not all courts can have current repairs. Such repairs were usually funded from the savings courts accumulated over the year. To exclude its influence on the formula result and to allow courts to plan current repairs in accordance with their needs rather than savings, we excluded this item from the regression analysis.

The result of this regression analysis is:

R2	0.71
Adjusted R2	0.70

Intercept	109,026.62
Civile	52.29
Penale	139.80
Contraventionale	31.08

The proposed formula is:

Buget = 109.026.62+(52.29*Civile+139.80*Penale+31.08*Contraventionale)
Budget =

Conclusion

While developing these recommendations, we carried out the regression analysis over multiple options of the operating expenditures structure but we present only the options with the best results. What option to apply to court budgeting is up to the sector decision-makers to decide. However, it is recommended to use Option 4. This would mean that the proposed formula will help to establish the spending limit for the following spending items:

Table 2. Spending lines subject to the regression analysis for Option 3

Line	Title
113.03	Office supplies and utility items
113.06	Books and periodicals
113.10	Pharmaceutical drugs and consumables
113.11	Telecommunications and mail
113.14	Upholstered furniture and equipment
113.18	Current repairs of equipment and inventory
113.20	National and local symbols, state decorations
113.21	Professional training
113.22	Publishing services
113.23	Protocol expenditures
113.30	Computing and IT activities
113.45	Goods and services that do not fall into other categories
114.01	Travels within the country

Court will plan the other expenditures that fall into Lines 113 (113.01, 113.02, 113.04, 113.17, 113.19, 113.29, 113.34, 113.35) and 135, using the zero-based budgeting model.

The list of lines can be supplemented depending on the possible changes as a result of the budget classification revision by the Ministry of Finance.

E. The Procedure for Applying the Proposed Procedure

The Superior Council of Magistracy and/or the Department of Judicial Administration will use the formula to establish the spending ceiling and courts will distribute the established financing as needed by the spending lines identified in the foregoing. The proposed formula implies using the number of cases examined. Considering the fiscal calendar, at the stage of the draft State Budget development it is possible to use either the number of cases actually examined the previous year or the projected number of cases examined for the current year. In the former case, there will be a two-year time lag because the budget is developed for the following year. Because of that it is proposed to identify the ceiling on the basis of the projected number of cases examined for the current year. This number will be determined on the basis of the statistics for the past 5 years by using the function "Forecast" available in Excel program. It is important to mention that using this function requires the first quarter and annual statistics. Therefore, the process of establishing the ceiling can start as soon as the statistics for Quarter 1 of the current year (which perfectly corresponds to the fiscal calendar) are available. If the Quarter 1 statistics are available before April 30, the ceiling can be established approximately by May 5. Since ICMS Version 3 has a statistical module, the judicial statistics should not be a problem for developing budget proposals. It is recommended to allocate funds only on the basis of the ICMS statistics.

Obviously, at the closure of the current fiscal year, the forecasted statistics will differ from the real data. To remove these discrepancies, it is necessary to analyze them as soon as real statistics are available and to adjust the courts' budgets at the next budget amendment. As planned in the calendar this would mean that at the end of February there will already be real statistics. By March 15, the analysis can be finalized and the budget adjustments that will be proposed for amending the budget identified. Table 3 shows an example of the budget calendar for identifying and revising the ceilings in accordance with the formula for year X+1, where X is the current year.

Table 3. Proposed actions and deadlines

Action	Deadline
Availability of statistics for Quarter 1 the year X	April 30, year X
Establishing spending ceilings in accordance with the formula for the fiscal year X+1	May 5, year X
Availability of statistics for the year X	February 28, year X+1
Analyzing and making proposals on amending the budget for the year X+1	March 15, year X+1

The implementation of the proposed budgeting model is a small court budgeting reform per se. As with any reform, budgeting should be changed with care. It requires a period of transition from the existing model to the proposed one. The idea of budgeting based on the number of cases examined consists in fair distribution of funds between courts. By applying the proposed formula, the budget will be reduced for some courts and increased for others. To avoid disrupting the activity of the courts whose funding will be cut, it is necessary to apply the formula in a balanced manner. The most efficient approach would be to "freeze" the budget of the courts for

which the formula will entail reduction at the existing level and to increase the budget of other courts by a certain percentage. This will allow underfinanced courts to align to the over financed ones.

The proposed formula identifies funds that must be allocated to courts for their daily work. If policy documents require actions that involve costs, these actions should be funded independently from the formula.

Annex 1 shows an example of identifying the court budget by means of the formula and a comparison with the approved 2013 budget. It should be taken into account that in this case the word "budget" refers to the budget of courts only for the spending lines established for Option 4. The number of cases was projected in accordance with the method described in the foregoing. For this example, the budget of courts for which the formula proposes a reduction was "frozen" but adjusted to the inflation rate projected for 2014. The budget for other courts was increased by the rate proposed by the formula. If the established budget exceeds the budget allocated by the Ministry of Finance considerably, the increase rate of the courts' budgets can be revised from the one proposed by the formula to one that is common for all courts.

2.2 Recommendation 2. Single methodology for determining the amount of funds for transport

If Option 4 is chosen, it is necessary to identify a common approach to planning transport expenditures (Line 113.13). Currently, there are two regulatory acts on planning transport expenditures: Government Decision No. 1404 of December 30, 2005, and Order No. 172 of December 9, 2005, of the Ministry of Transport and Road Infrastructure. Both acts apply to central and local governments and to a lesser degree to courts of law. This need is explained by the fact that courts with similar work conditions (the same distance from Chisinau or the jurisdictional appellate court, the same staff number, the same number of cars) budget for transport different amounts because of the historical budgeting. Some courts afford themselves to budget more funds for transport because their historical financing was better. Annex 2 shows data for 2012 referring to the car fleet and kilometrage.

Since transport expenditures depend on numerous factors, we propose a methodology for determining such expenditures, which will underlie the budget proposals and will take into account the following indicators:

1. The annual kilometrage norm established for one vehicle
2. Consumption norm established for one vehicle

Establishing the annual kilometrage norm for one vehicle

It is proposed to establish the minimal annual kilometrage norm for one vehicle in accordance with the following factors:

1. Type of court:
   - Trial court – 10 000 km per year
   - Appellate court – 20 000 km per year

2. Round trip distance between the court and Chisinau. In determining the distance, the number of monthly trips, which varies depending on the staff number,[4] will be factored in:
   - Courts with up to 8 persons inclusive—3 trips
   - Courts with between 9 and 12 persons inclusive—4 trips
   - Courts with more than 12 staff members—5 trips
3. If a court has members of a panel, board, working group, etc., who need to travel to Chisinau, the number of trips will be increased by one item per month.
4. The distance between the court and its jurisdictional appellate court. The calculation of this distance will be based on the assumption that every month there is one such trip.
5. For appellate courts, the distance between the appellate court and the trial court will be calculated with the assumption that in one year there will be 3 trips to each trial court from the jurisdiction of the respective appellate court.

Establishing the consumption norm (liters)

It is proposed to establish the consumption norm in accordance with the following factors:

1. The kilometrage norm established in accordance with the aforementioned points
2. The average consumption norm (l/100 km)
3. The useful life of the vehicle:
   - For vehicles of up to 5 years, the consumption norm will not be adjusted
   - For vehicles of between 5 and 8 years, the consumption norm will be adjusted by 5%
   - For vehicles of over 8 years, the consumption norm will be adjusted by 10%
4. Court's location:
   - For courts in Chisinau, the consumption norms will be increased by 15%
   - For courts in Balti, the consumption norm will be increased by 10%
   - For other courts, the consumption norm will be increased by 5%
5. The availability of air conditioners and climate control equipment. For all courts, the consumption norm will be increased by 7%.
6. Winter conditions. During winter, the consumption norm will be increased by 10%. The kilometrage during winter is determined as a ratio between the established kilometrage norm and the number of quarters. The kilometrage for one quarter will represent the winter kilometrage norm.

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[4] The staff number is the number of judges on the staff list + two persons.